MEMOIR

UPON THE ESTATES

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THE JESUITS POSSESSED IN CANADA,

AND

THE OBJECTS

TO WHICH THESE ESTATES SHOULD BE AT PRESENT APPLIED.

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TO WHICH THESE ESTATES SHOULD BE AT PRESENT APPLIED.

THE Jesuits established themselves in Canada in the XVIIth century. They established Colleges and acted as Missionaries in this country. They were in possession of considerable Estates derived from three different sources :

1.—Some were given to them by the King of France ;

2.—Others they received from individuals ;

3.—The rest were theirs by the right of purchase.

We have seen a printed volume, entitled : " Proceedings " of the House of Assembly in the first session of the " eighth Provincial Parliament of Lower Canada, upon the " state and progress of education, &c."

This volume published in 1824 contains, among other documents, a detailed list of the titles of estates which had belonged to the Jesuits.

We will quote from this list an example of each of the three kinds of property of which we have spoken.

1.—Estates given by the King.

Seigniory of Notre Dame des Anges or Charlesbourg.

" This Seigniory was granted to the Fathers of the " Company of Jesus and their successors, to be by them " held and enjoyed for ever as their property in *franc-aleu*, " with all Seigniorial and Feodal rights, on condition " that appeals from the decision of the Judges whom they " shall appoint over the said Seigniory, shall be to the " High Steward of New France or his Lieutenant at Que- " bec, *in consideration of the services which they have render-* " *ed as well to the French Inhabitants as to the Indians of*

" *the Country, which can never be sufficiently acknowledged.*"

2.—Estates given by individuals.

Seigniory of Batiscan.

" This Seigniory was given to the Reverend Fathers of " the Company of Jesus settled in New France for them " and their Successors to be held as an absolute Fief with " right of Superior, Mêsne and Inferior Jurisdiction, and " subject to Fealty and Homage to the said Jacques De- " laferté and his Heirs, according to the usages and cus- " toms of Fiefs in the Prévôté of Paris—subject also to the " payment of a silver cross of the value of sixty sols at the " end of every twenty years to the said Jacques Delaferté " and his heirs from the time that the said Lands should " be cultivated.—*The said Lands to be possessed by the said* " *Fathers Jesuits, applied or assigned to the Indians or others* " *becoming Christians, and in such manner as the said Fa-* " *thers shall judge fit,* so that the said Lands shall not be " taken out of their hands as long as they shall think pro- " per to hold and possess them.—*This Seigniory was given* " *for the love of God.*"

3.—Estates purchased by the Jesuits.

Seigniory of Belair or Bonhomme Mountain.

" This Seigniory was bought by the Reverend Fathers of " the Company of Jesus (with the right of Superior, Mêsne " and Inferior Jurisdiction, and that of hunting and fishing " within the limits thereof, subject to Fealty and Homage) " from some of the descendants of Guillaume Bonhomme " and other persons who had purchased some parts thereof " from other of his descendants."

These are only examples, as we have already said. But they serve to give accurate notions of the nature of those titles by which the Jesuits held property in Canada, and which, with trifling exceptions, were all analogous in character to those we have given.

At the epoch of the Conquest of Canada by the English, the Jesuits were in peaceful possession of these properties.

All their titles to property were regular—1stly Because, in 1678, they had obtained Letters Patent from Louis XIV, granting them permission to establish themselves in Cana-

da; 2dly Because, the donations made to them were invested with all the requisite forms of law.

The capitulation of Quebec took place on the 18th September, 1759, and that of Montreal on the 8th September, 1760.

The Articles of these two capitulations having reference, whether directly or indirectly, to the subject matter of this Memoir, are the following:—

Article 6 of the capitulation of Quebec.

Demand of the French Governor.

"That the exercise of the Catholic, Apostolic and "Roman religion shall be maintained; and that safe-"guards shall be granted to the houses of the clergy, and "to the monasteries, particularly to his Lordship the "Bishop of Quebec, who, animated with zeal for religion, "and charity for the people of his diocese, desires to reside "in it constantly, to exercise, freely and with that decency "which his character and the sacred offices of the Roman "religion require, his episcopal authority in the town of "Quebec, whenever he shall think proper, until the pos-"session of Canada shall be decided by a treaty between "their most Christian and Britannic Majesties."

Answer of the English General.

"*The free exercise of the Roman religion* is granted, like-"wise safe-guards to all religious persons, as well as to the "Bishop, who shall be at liberty to come and exercise, "freely and with decency, the functions of his office, "whenever he shall think proper, until the possession of "Canada shall have been decided between their Britannic "and most Christian Majesties."

Articles 27, 28, 32, 33, 34 and 35 of the capitulation of Montreal.

27. *Demand.* "The free exercise of the Catholic, Apos-"tolic, and Roman religion, shall subsist entire, in such "manner that all the states and the people of the Towns "and countries, places and distant posts, shall continue "to assemble in the churches, and to frequent the sacra-"ments as heretofore, without being molested in any "manner, directly or indirectly. These people shall be "obliged, by the English Government to pay their Priests

" the tithes, and all the taxes they were used to pay under " the Government of his most Christian Majesty."

Answer. " Granted, as to the *free exercise of their religion*, " the obligation of paying the tithes to the Priests will de- " pend on the King's pleasure."

28. *Demand.* " The Chapter, Priests, Curates and Mis- " sionaries shall continue with an entire liberty, their ex- " ercise and functions of Cures in the Parishes of the " Towns and Countries."

Answer. " Granted."

32. *Demand.* " The communities of Nuns shall be pre- " served in their constitutions and privileges; they shall " continue to observe their rules; they shall be exempted " from lodging any military; and it shall be forbid to mo- " lest them in their religious exercises, or to enter their " monasteries: safe-guards shall even be given them, if " they desire them."

Answer. " Granted."

33. *Demand.* " The preceding article shall likewise be " executed, with regard to the communities of Jesuits and " Recollets and of the house of the Priests of St. Sulpice " at Montreal; these last, and the Jesuits, shall preserve " their right to nominate to certain curacies and missions, " as heretofore."

Answer. " Refused till the King's pleasure be known."

34. *Demand.* " *All the communities*, and all the Priests, " shall preserve their moveables, *the property and revenues* " *of the Seigniories and other Estates* which they possess in " the colony, of what nature soever they be; *and the same* " *Estates* shall be preserved in their privileges, *rights*, ho- " nours and exemptions."

Answer. " Granted."

35. *Demand.* " If the Canons, Priests, Missionaries, the " Priests of the Seminary, of the foreign Missions, and " of St. Sulpice, as well as the Jesuits, and the Recollets, " chuse to go to France, a passage shall be granted them " in his Britannic Majesty's ships, *and they shall have leave* " *to sell, in whole or in part, the Estates and Moveables* " *which they possess in the colony*, either to the French " or to the English, without the least hindrance or obsta-

" cle from the British Government.—They may *take with* " *them, or send to France, the produce* of what nature soever " it be, of the said goods sold, paying the freight, as men- " tioned in the XXVIth article ; and such of the said " Priests, who chuse to go this year, shall be victualled " during the passage, at the expence of his Britannic Ma- " jesty ; and they shall take with them their baggage."

Answer. " *They shall be masters to dispose of their Estates* " *and to send the produce thereof,* as well as their persons, " and all that belongs to them to France."

The capitulation of Montreal consummated the conquest of Canada by the English.

In France, at the epoch of this conquest, the Jesuits were in plenary enjoyment of their rights : the first decree against them did not occur until 1761.

By the treaty of 1763, France ceded Canada to England.

This treaty contains the two following clauses :

" His Britannic Majesty, on his side, *agrees to grant the* " *liberty of the Catholic religion to the inhabitants of Canada :* " he will consequently give the most effectual orders, that " his new Roman Catholic subjects may profess the wor- " ship of their religion, according to the rites of the Romish " church, *as far as the laws of Great Britain permit.*

" His Britannic Majesty further agrees, *that the French* " *inhabitants, or others, who had been the subjects* of the most " Christian King in Canada, may retire with all safety and " freedom wherever they shall think proper, and may sell " their Estates, provided *it be to subjects of his Britannic* " *Majesty,* and bring away their effects, as well as their " persons, without being restrained in their emigration, un- " der any pretence whatsoever, except that of debts, or of " criminal prosecutions ; the term limited for this emigration, " shall be fixed to the space of eighteen months, to be com- " puted from the day of the exchange of the ratification of " the present treaty."

In 1774 (14th year of the reign of George III) the Parliament of England adopted an Act containing various provisions relative to the inhabitants of Canada. Among these the following demand attention.

Art. 5. " And, for the more perfect security and ease of

" the minds of the inhabitants of the said Province, it is " hereby declared, that his Majesty's subjects, professing " the religion of the Church of Rome of and in the said " Province of Quebec, may have, hold and enjoy, the free " exercise of the religion of the Church of Rome, subject " to the King's supremacy, declared and established by an " Act, made in the first year of the reign of Queen Eliza- " beth, over all the dominions and countries which then " did or thereafter should belong, to the Imperial Crown " of this realm ; and that the Clergy of the said Church " may hold, receive, and enjoy, their accustomed dues and " rights, with respect to such persons only as shall profess " the said religion."

Art. 6. " Provided nevertheless, that it shall be lawful " for his Majesty, his heirs or successors, to make such " provision out of the *rest* of the said accustomed dues and " rights, for the encouragement of the Protestant religion, " and for the maintenance and support of the Protestant " Clergy within the said Province, as he or they shall, " from time to time, think necessary and expedient.

Art. 8. " And be it further enacted by the authority " aforesaid, that all his Majesty's Canadian subjects within " the Province of Quebec, *the religious Orders and Commu-* " *nities only excepted*, may also hold and enjoy their pro- " perty and possessions, together with all customs and " usages relative thereto, and all other their civil rights in " as large, ample, and beneficial manner, as if the said " Proclamation, Commissions, Ordinances, and other Acts " and Instruments, had not been made, &c."

The English Government left the Jesuits in possession of their Estates, but Pope Clement XIV, having suppressed their Society by his Bull of the 21st July, 1773, they ceased to recruit their strength. Nevertheless they continued to keep school at Quebec until 1776 ; but at this epoch the Government having placed the public Records in the house they occupied, they were obliged to cease giving instruction. The administration and enjoyment of the Estates belonging to their Order was however left to them.

In 1787, Lord Amherst solicited from the King of England the surrender of a part of these Estates. The King

named Commissioners to examine, among other questions, whether the Estates demanded by Lord Amherst *could be legally given and granted in the manner proposed.* The petition of Lord Amherst it seems was not granted.

In 1789, the English Government conceived the idea of founding in the Province of Quebec a mixed University, that is to say Catholic and Protestant: A committee, presided over by Mr. W. Smith, was appointed for the examination of this project. Mr. Smith wrote to his Lordship M. Hubert, Bishop of Quebec, to request his opinion. That prelate expressed the opinion that *the time had not yet arrived for founding a University in Quebec.* He added that in order to place the Province in a condition fit to receive in the progress of time so great a boon, it would be necessary to encourage the studies prosecuted at the College of Montreal and the Seminary of Quebec..... " This " is a matter, said His Lordship, over which I watch with " the greatest interest." He proposed also to found a third College, having for its endowment the Estates of the Jesuits.

" I render to the Reverend Fathers Jesuits, said he, all " the justice they merit for the zeal with which they have " laboured, in this Colony, in the work of instruction and " for the salvation of souls. Nevertheless, I should not be " indisposed to adopt measures from the present date to " *secure their College as well as their other possessions* to the " Canadian people, under the authority of the Bishop of " Quebec. But, to whom would belong the government " of the College of Jesuits, if restored to its former footing? " In the first place to R. F. Glapion until his death, and " afterwards to those who should be appointed by the " Bishop. Is there anything extraordinary in such a pro- " ject? The following is an analysis of the principles " upon which I base it.

" 1.—The foundation of this College would consist only " of the Estates of the Jesuits.

" 2.—The Province has no right to appropriate them " otherwise than *according to their primordial destination.*

" 3.—The propagation of the Catholic faith is the prin- " cipal motive of all the grants.

" 4.—The circumstances of the donations and the quality " of the donors all prove that this was their intention. " *The Canadians considered as Catholics have then an in-* " *contestable right to these Estates.*

" 5.—The instruction of the Indians and the subsistence " of their missionaries seeming to have weighed considera- " bly with the donors of the Estates of the Jesuits, *is it* " *not fitting that the Bishop of Quebec, who deputes these* " *missionaries, should determine in their favor the application* " *of that portion of these Estates which shall be judged to have* " *been given for them,* rather than that they should be left " a charge upon the Government as many have been for " some years past? Now, in preserving the Estates of the " Jesuits for the Canadians *under the authority of the* " *Bishop,* he would be in a situation to carry into effect that " essential part of the intention of the donors; and it is " besides very probable that both the College and the pub- " lic would gain by this arrangement."

In his Report Mr. Smith expressed himself as follows upon the observations of the Bishop respecting the Estates of the Jesuits.

" The very Reverend Bishop of Quebec *was not singular* " in suggesting that a part of the Estates of the abolished " Order of Jesuits might serve for such an object."

The Bishop of Quebec of that day was near enough to the time when the Estates of the Jesuits were applied to their primitive destination, to know well what that destination was and the modes of effecting it in times past: In laying claim to this property in general, also, he had no interest in misdirecting its application in detail.

In 1790, the Parliament of England adopted an Act of which Section XXXV is in these words:

" And whereas, by the above-mentioned Act, passed in " the fourteenth year of the Reign of his present Majesty, " it was declared, That the Clergy of the Church of Rome, " in the Province of Quebec, *might hold, receive and enjoy* " *their accustomed dues and rights,* with respect to such per- " sons only as should profess the said religion; provided " nevertheless, that it should be lawful for his Majesty, " his Heirs or Successors, to make such Provision out of

" *the rest* of the said accustomed dues and rights, for the " encouragement of the Protestant Religion, and for the " maintenance and support of a Protestant Clergy within " the said Province, as he or they should from time to time " think necessary and expedient: And whereas by his " Majesty's Royal instructions, given under his Majesty's " Royal Sign Manual, on the third day of January, in the " year of our Lord one thousand seven hundred and se- " venty-five, to Guy Carleton, Esquire, now Lord Dorches- " ter, at that time his Majesty's Captain General and " Governor in Chief in and over his Majesty's Province of " Quebec, his Majesty was pleased, amongst other things, " to direct: " That no Incumbent professing the Religion of " the Church of Rome, appointed to any parish in the said " Province, should be entitled to receive any Tythes for " lands or possessions occupied by a Protestant, but that " such Tythes should be received by such persons as the " said Guy Carleton, Esquire, his Majesty's Captain Ge- " neral and Governor in Chief in and over his Majesty's " said Province of Quebec, should appoint, and should be " reserved in the hands of his Majesty's Receiver General " of the said Province, for the support of a Protestant " Clergy in his Majesty's said Province, to be actually re- " sident within the same, and not otherwise, according to " such directions as the said Guy Carleton, Esquire, His " Majesty's Captain General and Governor in Chief in and " over his Majesty's said Province, should receive from his " Majesty in that behalf; *and that in like manner all grow-* " *ing rents and profits of a vacant benefice should during* " *such vacancy, be reserved for and applied to the like uses.*" " And whereas his Majesty's pleasure has likewise been " signified to the same effect in his Majesty's Royal instruc- " tions, given in like manner to Sir Frederick Haldimand, " Knight of the most Honorable Order of the Bath, late his " Majesty's Captain General and Governor in Chief in and " over his Majesty's said Province of Quebec; and also in " his Majesty's Royal instructions, given in like manner to " the said Right Honorable Guy Lord Dorchester, now his " Majesty's Captain General and Governor in Chief in and " over his Majesty's said Province of Quebec; be it enacted

" by the authority aforesaid, that the said declaration and " provision contained in the said above mentioned Act, " and also the said provision so made by his Majesty in " consequence thereof, by his instructions above recited, " shall remain and continue to be of full force and effect in " each of the said two Provinces of Upper-Canada and " Lower-Canada respectively, *except in so far as the said* " *declaration or provisions respectively, or any part thereof,* " *shall be expressly varied or repealed by any Act or Acts* " *which may be passed by the Legislative Council and As-* " *sembly of the said Provinces respectively,* and assented to " by his Majesty, his Heirs or Successors, under the res- " triction hereinafter provided."

The last Jesuit of Canada was Father Cazot; he died in 1800. Up to the period of his decease the Government had not touched the property of the Jesuits; but immediately upon his death, the authorities took possession of the estates. It seems, however, that they had no intention of appropriating the revenues to themselves, but left them to accumulate in a separate chest.

In 1832 the Crown placed these Estates at the disposal of the Canadian Legislature, to be applied to the purposes of *education :* and this gave occasion to an Act of the Legislature of which the first section is as follows :

" Most Gracious Sovereign,—Whereas His Excellency " Matthew Lord Aylmer, Knight Commander of the Most " Honorable Military Order of the Bath, Governor in Chief, " was pleased by Message bearing date the eighteenth day " of November, one thousand eight hundred and thirty-one, " to lay before both Houses of the Provincial Parliament, " a despatch by him received from Lord Viscount Gode- " rich, Your Majesty's Principal Secretary of State for the " Colonial Department, bearing date the seventh day of " July in the said year, whereby it appears that *Your* " *Majesty has been graciously pleased to confide without* " *reserve to the Provincial Legislature, the appropriation of* " *the funds arising from the Estates of the late order of Je-* " *suits to the purposes of education exclusively ;* and whereas " it is expedient to make Legislative provision for carrying " Your Majesty's gracious intentions in that behalf into

" effect:—May it therefore please Your Majesty that it " may be enacted, and be it enacted by the King's Most " Excellent Majesty, by and with the advice and consent " of the Legislative Council and Assembly of the Province " of Lower Canada, constituted and assembled by virtue " of and under the authority of an Act passed in the Parlia- " ment of Great Britain, intituled :* *An Act to repeal certain* " *parts of an Act passed in the fourteenth year of His Ma-* " *jesty's Reign, intituled, An Act for making more effectual* " *provision for the Government of the said Province of Que-* " *bec in North America, and to make further provision for* " *the Government of the said Province ;* and it is hereby en- " acted by the authority of the same, that from and after " the passing of this Act, all monies arising out of the Es- " tates of the late Order of Jesuits which now are in or " may hereafter come into the hands of the Receiver Ge- " neral of this Province, shall be placed in a separate chest " in the vaults wherein the public monies of the Province " are kept, *and shall be applied to the purposes of education,* " *exclusively, in the manner provided by this Act,* OR BY ANY " ACT OR ACTS WHICH MAY HEREAFTER BE PASSED BY THE " PROVINCIAL LEGISLATURE *in that behalf, and not otherwise.*"

This then is the present state of the question.

The Estates of the Jesuits are to be applied to the purposes of *education* ; that is a settled point that no one contests.

But, ought they to be exclusively applied to the maintenance of Catholic Colleges or Schools ?

Or, may a portion be taken for Colleges and Schools kept by Protestants ?

This is the question.

To the Canadian Legislature belongs the solution of this question ; but that body can only decide it upon strict principles of justice and equity, in a manner suited to the interests of the country and becoming its own character. Now, justice, equity, and the general interest unite in favor of Catholic Colleges or Schools.

To be convinced of this, it is only necessary to examine

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* It is in the Act of 1790 wherefrom we have extracted the above article 35.

what was the nature of these Estates at the period of the conquest.

And afterwards investigate what have been the effects of the conquest?

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§ 1st.

What was the nature of the Estates of the Jesuits at the period of the conquest?

These Estates were incontestably the property of the Catholic Church.

It was a generally acknowledged principle that the property of the Catholic Church could not be diverted from its destination.

This principle was founded upon the establishment of this Church (as to its temporal character) as it issued from the hands of the Christian Emperors, and as it has perpetuated itself to the present time.

It was considered that human Society had two kinds of wants.

Spiritual wants for which the Church was charged to provide.

And temporal wants which it belonged to the State to satisfy.

Each of these two services required fixed pecuniary resources.

The funds destined to defray the expences of the Church, ought they to be entirely distinct and separated from those which were destined to meet the expences of the State?

Yes; they ought to be. It was thought desirable that the Church should have separate revenues, and that these revenues should never either be taken from it or carried into the public treasury of the State. This was the doctrine and the established rule throughout the whole extent of the Catholic world before the French revolution. Different maxims we know were adopted by that revolution. In the present day in France the charge of the Clergy and the expences of worship form a chapter in the Budget of the State; and it is the same with ecclesiastic expences as with the costs of justice, of war and marine. But it is

not from this point of view we must regard the Estates of the Jesuits in order to know what they were at the time of the conquest of Canada by England, that is to say in 1760; it is indispensable that we go back to the constitution of the Catholic Church (as to property) as it existed at that epoch.

We repeat that at that date there was between the patrimony of the Catholic Church and that of the State a separation absolute and insurmountable.

It was felt that the means of providing for the necessary charges of religion, which are fixed as religion itself, could not be left to depend upon the vicissitudes of politics. Such was the situation of the Catholic body. We might easily justify this state of things, if that were the question; but it would be a superfluous task. Whether this state of things be approved more or less, the fact of its existence must be taken as incontestable.

The resources of the Catholic Church were of two sorts.

1.—Tithes.

2.—The Revenues of the property which this Church possessed.

This property consisted of the secular benefices and the moveable and immoveable objects belonging to the religious communities.

Both kinds were inalienable; and why was it so? Because, says d'Héricourt, "*they belonged to the Church, and "to God to whom they had been consecrated.*" (Lois Ecclésiastiques, *De l'aliénation des biens de l'Eglise No.* 1.)

The Church, then, excepting only in certain cases of absolute necessity, had not the power of alienating its property.

Still less, had the State the right to seize upon the property of the Church, either to sell or give it a different destination.

Every benefice and every religious society constituted a separate establishment; but these different establishments were in reality but the members of one and the same body, that is to say of the Church.

It followed that, if a benefice or a society were suppres-

sed, the property possessed by that establishment did not become the property of the State as vacant property without an owner ; it remained in the patrimony of the Church ; and there were two reasons, the one historical, the other logical, why it should be so.

First, let us examine the historical reason.

In the first ages of the Church, the Bishops had the administration of all the ecclesiastical property of their diocese, and divided the revenues amongst all the Ministers of the Altars belonging to their diocese. In the Fifth Century, was commenced the division of ecclesiastical property among the different persons who exercised spiritual functions. This was the origin of benefices.

" Ecclesiastic benefices, says Fleury in his Institutes, pro-
" ceed from the *partition* that was made of the property of
" the Church in the Fifth Century." (See also Durand de Maillane, under the head *Biens de l'Eglise*). But this *partition* did not change the character of the property ; it was in reality only an appropriation to specific services. D'Héricourt's definition of a *bénéfice* is, " a right that the *Church*
" accords to one of the Clergy to take a certain portion of the
" ecclesiastical revenues, on condition that he renders to the
" Church the services prescribed by the Canons, by usage
" or by a deed of endowment." Thus a particular farm or house, although attached to a benefice, always preserves its original character, of Church property ; it does not cease to form part of the whole mass of ecclesiastical property ; and, consequently, if the benefice should happen to be suppressed, the State would not have the right either to seize upon the farm or house, or give it a non-religious destination. And what we say in this respect of benefices applies evidently with equal force to religious societies and their property.

To the historical let us add the logical reason.

The institution of every benefice and of every religious society had for its object the satisfaction of some religious want. If the benefice or the society should be suppressed, the want would be unprovided for. But, as the matter could not remain thus, it would become necessary for the Church to provide in some other way, that

is to say, to charge another beneficiary or another society with the service which originally attached to the suppressed establishment; and thus justice and reason would require that the endowment of that establishment should pass to the one which succeeded to the fulfilment of its duties.

This disposition, or rather this new appropriation of property, the original title whereof was suppressed, would require the concurrence of the Church and of the State.

Of the Church, because to it belongs the right of judging to whom should be confided the service originally performed by the suppressed establishment.

Of the State, because whatever relates to the protection and administration of ecclesiastical property necessarily belongs to the civil laws.

To the reasons we have hastily sketched, another must be added.

The greater part of ecclesiastical property proceeded from donations made by individuals with an explicit or implied direction as to the use to which they should be put. So long as the donatory establishment subsisted, we could not properly alter the destination of the property; but if it should be suppressed, equity would exact that we should come as near as possible to the intention of the donor, in confiding the service for which the donation was made to another establishment analogous to the first, to which the property would be conveyed. It would be supremely unjust that the State should possess itself of such property; for, having relation to a religious service this service could only be executed by persons invested with an ecclesiastic character; so that the State, in appropriating to itself the property would not only despoil the Church and withold from the Catholic body that service to which it had a right, but would violate the will of the donor. The French Revolution, we know, was guilty of this spoliation; but as the Canadian Legislature is certainly not animated by the spirit of the Constituent Assembly, we need not waste time in combating such a precedent as this.

The necessity of respecting the intentions of the donors

was another reason for the intervention of the civil power to give a direction to the property of the suppressed Order; for, it is principally that power that is charged with the duty of seeing that the conditions annexed to voluntary grants are strictly carried out. (*See Van Espen, part* 2. *Tit.* 25, *ch.* 6. *No.* 17 ; *and Pithon, upon article* 25 *of the liberties of the Gallican Church.*)

This necessity of respecting the intentions of donors ought also to be regarded in another point of view.

It is opposed, as we have already shewn, to the misappropriation of property given for religious purposes to any but those purposes.

The founder of an establishment wills in the first place that the property with which he endows it shall be applied to its support.

In the second place he wills, that in case of its suppression, the property shall be applied to the support of another ecclesiastical service of the same nature. Upon this point there is necessarily a presumed tacit consent on his part, since we must suppose him to have been acquainted with the laws and maxims of the Church.

If then we give to this property a different direction from that we have described we manifestly violate the intention of the founder, contravening thereby the principles of natural right and those positive laws of all countries which forbid a departure from the expressed or tacit conditions of a bequest.

A Government which should oppose itself to the appropriation of the Estates of a suppressed Catholic establishment to another analogous Catholic object, would be obliged to restore them to the families of the donors: else it would incur the just reproach of spoliation.

If we consult the history of the Church, it will be seen that the doctrine we advance is not mere theory, but is abundantly confirmed by facts.

In 1302, the Templars were suppressed by Pope Clement V ; and their Estates were distributed among three other religious and military Orders who rendered analagous services to the Church, that is to say: the Order of St. John of Jerusalem, that of Calatrava, and that of the

Knights of Livonia. In 1626, Urbain VIII. suppressed the congregation of *Frères Conventuels*, and their Estates were given to the Order of *Frères Mineurs Conventuels* of St. Francis. In 1650, Innocent X. secularised the Order of Saint Basil of the Armenians, and subjected the brothers to the jurisdiction of the Ordinaires : their Estates were handed over to the diocesan Bishops, and pensions were assigned to the titulars upon these Estates.

Sometimes it has happened that without suppressing a religious Order, a portion of its property has been transferred to another Order, the first having ceased to perform the particular service for which the property was originally bestowed upon it, and the second executing that service.

" The Jesuits, says d'Héricourt, are by the Bull of their " foundation, of the number of mendicant Orders ; but the " same Bull authorises their having Colleges to which re- " venues may be attached for the professors and students " who are members of the society, and places the govern- " ment and superintendence of these Colleges and their " endowments in the general and the society. The Con- " stitutions forbid the general to apply any part of the " revenues of the Colleges to the use of the *profès* ; but the " declarations, which one may take as commentary that " sometimes modifies the text, permit in general assistance " to be given from these funds to those among the *profès* " who are useful to the Colleges, as the preachers, profes- " sors and confessors. The funds with which the Colleges " of Jesuits have been endowed have not considerably aug- " mented the Estates of the Church, because property was " given to them, especially in Germany, which was taken " from other religious bodies. The Benedictines and " those of Citeaux, who were most damaged by these " changes, complained of them as an usurpation ; but the " Popes, who had acted in concert with the Emperors and " other Sovereigns of Germany, replied that it was to the " advantage of the Church to establish Colleges and Semi- " naries to oppose the progress of new heresies, and that " the Jesuits were better able to maintain these establish- " ments than the other religious bodies, *whose monasteries* " *were not as formerly, public Schools. It was carrying out*

" *the intention of the donor to give a part of these revenues to* " *the Jesuits*..... It might be added that a great part of " the property of these bodies *had belonged to other monks* " *or secular ecclesiastics*, &c..... There have been many " unions of regular benefices added to the Colleges of the " Jesuits during the last Century..... The revenues of " congregations more recent than the Jesuits, and which " had not been formed out of ancient orders, were derived " to them from the unions of estates, *or by their entrance* " *into monasteries the brotherhood of which had been dismiss-* " *ed*, or by the free gift of the faithful."

By what precedes, we have established that the property of the Church may pass from one ecclesiastical establishment to another, but that it has never been severed from the common patrimony of the Church. (1). The different religious orders and the different functions of the secular clergy are only instruments by means of which the Church fulfils the task that God has confided to her: she may renounce one of these instruments, and supply the place by others of more activity and energy; but she is bound always to preserve within herself the totality of her strength and resources.

If these maxims in some instances, even before the Revolution of 1789, have been departed from, and the Church in consequence, despoiled of property that belonged to her, such acts cannot be taken as precedents, because they were contrary to canonical rules, and these rules were received as the laws of the State in every Catholic Country. The Governments which seized the property of the Church in contravention of these principles, committed an usurpation; force prevailed over right but did not destroy it. The Church may therefore exclaim as well against the spoliations already committed upon her, as in opposition to any further attempts of the kind in contemplation against her.

So fully comprehended and admitted in all times has been this principle, that when Napoleon, who certainly was not disposed to surrender the rights of the Temporal

(1) With the exception of some altogether extraordinary cases and which can only occur with the consent of the Church itself, as will be seen hereafter.

power, negociated with the Pope the Concordat of the 20th messidor, in the year IX, he demanded and obtained from the Sovereign Pontiff the ratification of the sales of Church property which had been made during the French Revolution. This ratification was granted in the following terms, by article 13 of the Concordat :

" His Holiness for the sake of peace and the happy re-es-
" tablishment of the Catholic religion, declares that neither
" he nor any of his successors *will disturb in any manner*
" *the holders of alienated ecclesiastical property, and that*
" *consequently* THE OWNERSHIP OF THIS PROPERTY, *the rights*
" *and revenues thereto belonging will remain in the* UNDISPUT-
" ED POSSESSION (*incommutables*) *of them or their repre-*
" *sentatives.*"

The force of this clause is obvious : notwithstanding the laws which lodged in the State the property of the Estates of the Church in France and directed their sale, the *property* was not *undisputed* in the hands of the holders. To give an *undisputed title* to this property, it was essential that the Church, personified by its Chief, should interpose and give validity to the alienations. Thus it appears that the State has never been able legally to appropriate the Estates of the Church whether the religious establishment to which they belonged were still in existence or had been suppressed. In the latter case the property cannot be considered in the light of vacant unowned property ; for it belongs to the common patrimony of the Church, and is destined as a provision for services which the Church must ensure by charging some new establishment with their performance and transferring the Estates of the suppressed Order to it.

The history of the Church affords a multitude of examples of the application of the maxims we have enunciated. Since as long back as the V^th^ Century it has been held necessary to assemble a Council to examine the grounds of any alienation of ecclesiastical property. (*Council of Carthage in* 401, *ap. Gratian. Causa XVIII. quæst. IV. c.* 39. *Letter of Pope St. Hilaire to the Bishops of France in* 459.) From the date of the VIII^th^ Century, the Bishops were constrained to promise under Oath,

at their consecration, that they would not allow any alienation of ecclesiastical property to take place without the intervention of the Pope. In 1468 Paul II. declared that he would invalidate every alienation of ecclesiastical property made without the concurrence of the Sovereign Pontiff. In 1648 Innocent X. solemnly declared null all the secularisations decided by the treaty of Westphalia.

In order that the property of the Church become the property of the State (which can only occur under circumstances rare and exceptional) the concurrence of two powers, the spiritual and the temporal, is necessary. The consent which the first gives to an alienation so contrary to ordinary principles is never based upon any other motive but the interest of religion. Thus we find Pope Clement IX. suppressing on the 6th December, 1668, at the solicitation of the Republic of Venice, the three regular Orders of the Canons of St. George in Alga, of the Hieronymites of Fesoles, and the Jesuates, and consenting that their property should be applied to the costs of the war of Candia, that Christendom then maintained against the Turks. The Sovereign Pontiff judged that the urgent necessity of defending the christian community against the infidels was more than equivalent to the utility of the three religious Orders.

So, in like manner, Pope Pius VII. when he confirmed by the Concordat of the year IX, the alienation of the property of the Church of France was moved thereto..... "*for the sake of peace and the happy re-establishment oft he* "*Catholic Religion.*"

We may take it as a settled point that the property of the Catholic Church cannot be legally disposed of but in the interest of the Catholic religion.

In ordinary cases this property should not be severed from the patrimony of the Church ; and if the religious establishment that originally possessed it should become extinct, the property should be transmitted to another religious establishment subject with regard to that property to the same obligations as the first. This transfer is effected by the concurrence of the spiritual and the temporal powers.

If under circumstances of a grave and special nature any such property should be severed from the patrimony of the Church and placed at the disposal of the State, the change can be made only with the express consent of the Sovereign Pontiff, who is governed in making the transfer by exalted religious considerations.

Let us apply these principles to the Jesuits of Canada, and to the Estates possessed by them.

The Jesuits of Canada formed an ecclesiastical establishment whose object was to instruct the Catholic youth of the Country and send missionaries among the Indians.

These two functions of the Jesuits were in the nature of a religious service ; for the monastic orders which consecrated their labours to education are considered as engaged in a Catholic work, because education well directed is the most certain guarantee of the preservation of the faith and of the salvation of souls ; never has this point been disputed. (*See the passage above cited from d'Héricourt.*) And, as to missions the evidence is equally strong.

The Jesuits of Canada possessed Estates which they had derived partly from grants made by the King of France and by individuals, and partly from purchases made by their Society.

The destination of them all was, to provide for the religious services with which the Jesuits were charged.

This destination was the more clear because by their constitutions the Jesuits were forbidden to possess property either in their aggregate or individual interest ; because the revenues of their property could only be employed for the purposes confided to them ; and that if the Members of the Congregation subsisted upon the produce of the property, it was in exchange for the services they rendered to the Colleges and other religious establishments to which their Estates were annexed.

This was the condition of things in 1760, the epoch of the conquest.

What could subsequently happen to affect this condition of things ?

Two events were possible ; the one, the continuance of the Society. The other its destruction, as was in fact accomplished by the decree of Clement XIV.

In the first hypothesis, this Society would retain its Estates, upon the understood condition of providing for the education of the Catholic youth of the Country and for the missions.

In the second, the Estates of the Jesuits would have to be transferred to another religious establishment, whether regular or secular, which would be required to fulfil the functions imposed upon the Jesuits, that is to say the instruction of the Catholic youth and the diffusion among the Indians of the light of the Gospel and the benefits of civilisation. (1).

These two events were the only ones legally possible. And in either case the property must continue to form part of the patrimony of the Church.

So, therefore, unless the conquest changed this state of things, it must be acknowledged that the Estates in question preserve to this day the character of property belonging to the Catholic Church, and that consequently any appropriation of them not exclusively Catholic, would be an abuse of power and an usurpation.

We are hence led to inquire whether the conquest has changed this aspect of the question. This inquiry will be the subject of the following portion of the Memoir.

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§ 2.

What have been the effects of the conquest?

Upon the principles of public right recognized by modern States, the conqueror acquires only the sovereignty of the conquered country ; the rights of the dispossessed Sovereign are transferred to him ; but the effect of the conquest goes no further. The conqueror cannot seize upon Estates belonging to individuals in any case in which the preceding Sovereign would not have been able to do so. Nor can he seize upon property belonging either to the

[1]. In this case also, it would be necessary to leave to the members of the Society of Jesuits the *usufruct* of the property or to pension them. This, indeed, is what the English Government honorably admitted as their due in leaving the ancient Jesuits the revenues of their Estates.

Church, charitable institutions, or public bodies; for this property has been so created either for the spiritual or temporal welfare of the inhabitants, and ought to be respected, therefore, as much as private property.

" The conqueror who takes a town or province from " his enemy, " says Vattel," cannot justly acquire over it " any other rights than such as belonged to the sovereign " against whom he has taken up arms. War authorizes him " to possess himself of what belongs to his enemy : if he " deprives him of the sovereignty of that town or province, " he acquires it such as it is, with all its limitations and " modifications. Accordingly, care is usually taken to sti- " pulate, *both in particular capitulations and in treaties of* " *peace*, that the towns and countries ceded shall retain all " their liberties, privileges and immunities. And why " should they be deprived of them by the conqueror, on " account of his quarrel with their sovereign ?—(*Book* 3, " *ch.* 13, § 199)."

If, then, our capitulations and the treaty of peace were silent, the common law of nations would sustain our position.

But these formal documents do in fact relieve the question from every doubt; and even supposing there was any uncertainty in their language, an interpretation should be adopted in accordance with the general rules of construction established by the laws of nations, that is to say, in a manner the most liberal and favorable to the inhabitants of the conquered province.

We affirm that the capitulation and the treaty are decisive.

The capitulation of Quebec, that of Montreal, and the treaty of 1763, grant *to the inhabitants of Canada the exercise of the Catholic religion.* If this were even an isolated clause, it would suffice ; for we cannot grant an end without also granting the means, and the diplomatic articles that guarantee to a conquered people the free exercise of the Catholic religion, guarantee thereby to the Catholic Church, the possession of its Estates which furnish it with the necessary resources to meet the expences of public worship.

But the capitulations and the treaty did not stop there,

—their provisions are so explicit as scarcely to need comment.

Article 34 of the capitulation of Montreal expressly declares that..... " *All the* COMMUNITIES, and all the priests, " shall preserve their moveables, the *property and revenues* " *of the seigniories and other estates* which they possess, of " *what nature soever they be ;* and the same *Estates* shall be " preserved in their privileges, *rights*, honours, and exemp- " tions."

The Jesuits have therefore *preserved the property* of their *Estates*, as fully as they had it before the conquest..... And these Estates have *preserved* their *rights*, that is to say, their nature has remained the same, and they continue impressed with the character of Church property, and ought to be exclusively applied to Catholic uses.

The capitulation of Montreal even goes further, for it grants to the religious communities and to the *Jesuits* in particular, *leave to sell in whole or in part the Estates and moveables which they possess in the Colony, and to take with them or send to France the produce* (*Art.* 35.)

The conquering nation evidently acknowledged by these passages not only that she had not the right at that time to possess herself of the Jesuits' Estates, but that these Estates could not under any circumstances become her property ; for if she could have foreseen any possible event whereby this might happen, she would not have granted to the Jesuits *the liberty to sell their Estates and carry the produce away with them.*

If the Jesuits had *then* sold their Estates, they might according to the capitulation, have carried the price they received out of the Colony, and employed it in the support of other religious establishments elsewhere maintained by this society.

In that case the Catholic religion would have exclusively profited by the transaction. Why then should the Jesuits be put in a worse condition because they did not avail themselves of the permission given to them to sell, accorded by the capitulation ? England manifestly had a greater interest in the retention of these Estates in the hands in which she then found them than in seeing them

sold and the produce carried away into other Countries: by what reversal of all of right ideas could she adopt a course of greater severity toward the Catholic religion in the former case than in the latter.

It is to be observed that there is not, nor can there be, any question of selling these Estates and carrying the produce into foreign Countries in the present day. The reason is 1stly, that the treaty limited the power to sell to a period of 18 months after its date; 2ndly, according to the capitulation, the power was given to each religious congregation with reference to its own Estates. It would therefore have ceased with regard to the Jesuits' Estates with the suppression of that order, even had not the period fixed by the treaty expired. The Estates in question then must be directed to a Catholic object within the Province of Canada. The reasoning we offer upon this head is unanswerable. If by virtue of the capitulation, the Catholic Church could appropriate the value of these Estates by selling them as she was entitled to do, how much stronger is her title to all the advantages attaching to them when putting them to religious uses by which this Country benefits.

Will it be said that the 33d Article of the Capitulation of Montreal is opposed to the communities of *Jesuits*, of *the Recollets*, *and the Priests of Saint Sulpice*, because the English General *refused* the demand contained in that Article until the *pleasure of the King* of England *should be known.*

The French General, it will be noticed, did not in that Article confine himself to the demand that the communities should be maintained,—he further required that *they should have continued to them the right to appoint to certain curacies and missions.* It is evidently this latter point that was the cause of the refusal, for Article 33 cannot be taken in a sense contradictory to Articles 34 and 35: and these Articles not only uphold the communities, but preserve to them in a plenary manner *the possession of their Estates.*

But, if we went even the length of imagining that the idea of the English General, when he refused Article 33, was that his government might suppress these Societies,

there would still remain sufficient to bear us out in our doctrine in the fact that these societies were maintained in the *property of their Estates* and that the Estates preserved their *rights;* because the suppression could then only take place upon the condition of transferring the Estates to other Catholic establishments.

The capitulation of Montreal does not relate only to that City and the territory dependent on it; its provisions refer to the *colony:* meaning evidently the whole colony, and it is easy to perceive that it must be so; it was the capitulation of Montreal that consummated the conquest; the French General and his troops abandoned Canada and were to embark for France. (*See* 12 *and the following Articles of the capitulation*); in such a situation it was natural that the French General should stipulate for the *whole colony;* and he did so in terms clear and distinct.

Capitulations containing covenants relative to existing properties in a city or in a province have not less the force of law than treaties of peace; Vattel expressly declares this; and reason and good faith reject the contrary opinion. It is the capitulation that puts the conqueror in possession of his conquest; how then could he pretend to the right of keeping his conquest and at the same time to the right of violating the conditions of the compact upon which he had obtained it? If he had not subscribed to the conditions demanded by the vanquished, he would have pushed them to a desperate defence, the possible result of which might have been to turn the chances of the war, or at least to cause enormous losses. The conditions of a capitulation are therefore sacred.

Moreover, the treaty of 1763, although it does not reproduce in detail all the clauses of the capitulation of Montreal relative to property, contains implicitly the confirmation of these clauses, where it declares *that all the French inhabitants and others who have been subjects of his Most Christian Majesty may sell their Estates, &c.* The religious communities not being excepted from this permission, are evidently comprised in it. If it were desired to exclude them, it would have been necessary to do so textually: an express clause upon this subject would have been the more

necessary, inasmuch as the capitulation of Montreal had formally granted the right to *sell*, and a treaty is never held to derogate from precedent stipulations unless the derogation be clear and positive.

If the treaty, after confirming *to the inhabitants of Canada the exercise of the Catholic Religion*, adds these words: "*as far as the laws of England permit*,".....this restriction evidently does not refer to the appropriation of ecclesiastical Estates nor to the question of property in them, but uniquely to certain public ceremonies, such as processions in the open air, which cannot take place in a country where Protestants are to be found side by side with Catholics and of which the Sovereign is Protestant.

It results from all that has been advanced above, that the conquest has in no respect changed the nature of the Estates of the Jesuits nor affected the exclusive right which the Catholic Church has over these Estates.

Upon the suppression therefore of the Society of Jesuits in 1773, their legal situation was exactly the same as if the conquest had never taken place.

By the suppression of the Order, two interests presented themselves for consideration.

1.—That of the Jesuits, then living, considered as individuals.

2.—That of the Church with reference to the question of property in its estates.

To each of these interests the principles foregoing apply, because, we repeat once more, the conquest had changed nothing either as to the nature or destination of these Estates.

Upon the first point the British Government has done homage to the principle in leaving the Jesuits the enjoyment of their Estates until the death of the last member of the Order.

Upon the second, the rules applicable to the matter should be adhered to. We have a right to declare that these Estates belong to the Catholic Church, that they cannot be applied to any other objects but such as shall be useful to that Church, and consequently, as it is at present proposed to devote the revenues to *Education*, a course of

proceeding to which no one dreams of offering an objection, that these Estates ought to be exclusively appropriated to the endowment of Catholic Colleges or Schools. Nevertheless they might be also employed in the support of missions having for their object to bring over the Indians to the Catholic faith ; for, unquestionably, that was one of the original objects to which these Estates were destined. These points should be arranged in concert between the temporal authority and the spiritual authority, represented, the first by the Government and the Legislature of Canada,—the second by their Lordships the Bishops.

We may observe, *en passant*, that the decree of Clement XIV was conformable to the maxims we have brought forward.

In one part of it, indeed, he declared that the means of subsistence should be provided for the members of the suppressed congregation.

And as to their Estates, he declared that, " The houses evacuated by them should be converted to *pious uses*, according as it should be judged as to time and place the most conformable *to the holy Canons, to the wish of the founders, to the augmentation of divine worship, and to the public utility of the Church.*"

This was no unwarranted proceeding on the part of the Holy See ; it was the expression of the ecclesiastical law in force upon that point throughout the whole extent of the Catholic world.

It may be urged that the Acts of the British Parliament already cited, seem to import that a part of the property in question may be appropriated to Protestant worship.

To such an assertion we should reply that these Acts express no clear meaning to this effect.

The first (that of 1774) commences by declaring that *the clergy of the Catholic Church may hold, receive and enjoy their accustomed dues and rights*, (section 5.) The necessary consequence of this enactment is, that the laws of this Church, relative to the inalienability and exclusive appropriation of its property, must be sustained.

It is true that section 6 of the same Act adds, that the King of England may provide *for the encouragement of the*

Protestant religion out of the residue of the said accustomed dues and rights.

But this provision of the Act could take effect only in the event of its being shewn that there was a *residue*, that is to say, for example, that the revenues of the Jesuits' Estates exceeded what was necessary for the endowment of Colleges and Schools Now, from the information we have received, this is not so, and the revenue from these estates presents no *residue*.

Section 8, in guaranteeing to the inhabitants their property, adds these words: *the religious Orders and Communities only excepted.*

But what is the meaning of this *exception?* One does not clearly perceive it. Does it mean that the Government may, at its mere will and pleasure, seize upon the property of *these Orders and Communities?* It is impossible to adopt an interpretation so contrary to justice and the faith of treaties. This section rationally admits of but one of the two following interpretations:

Either it signifies that the right of the communities is not as absolute as that of individuals, since should the receipts of the former present a *residue*, the government may employ the *residue* for the encouragement of the Protestant religion:

Or, it signifies that in the event of an Order or a Community being suppressed, the property of that Order or of that Community shall pass to other Catholic establishments.

As respects the Act of 1790, it only re-enacts that of 1774 relative to the *residue* (*or surplus*) of the revenues. It simply adds, that in the event of a *benefice* becoming *vacant* the growing rents and profits of the same *during the vacancy* should be taken and applied to the encouragement of Protestant worship. Since the Parliament expressly limited its enactment to the rent and profits accruing *during the vacancy*, it acknowledged that with this exception it had no right to the revenues, and still less to the property of the estates belonging to the Catholic Church.

In France, the King had a right to the revenues of Archbishopries and Bishopries during the vacancy of their

Sees. This right, known by the name of *régale*, did not change the character of the property of Bishoprics and Archbishoprics as property of the Church. (1)

The capitulation of Montreal had left undecided the question of tithes, the English General having replied that *upon this point all would depend upon the pleasure of the King.*

The Act of Parliament of 1790, section 35, is more favorable to the Catholic Clergy than the capitulation, for it maintains their right to tithes, only declaring that the Clergy should collect none from protestants. How can we imagine that the Parliament which was more liberal than the capitulation upon this point, could intend to violate that same capitulation with respect to the property of the communities?

The two Acts of Parliament then contain no positive provisions in favor of the system we combat; and that which best proves it is the conduct of the British Government, which would neither appropriate to itself the Jesuits' Estates, nor concede them to Lord Amherst, but has kept in reserve the rents and profits of them. Has it not thereby implicitly avowed the justice of the doctrine of the Bishop of Quebec, a doctrine to which Mr. Smith, President of the Commission of 1789, give at least an indirect assent.

Let us however go still further, and suppose that the Acts of 1774 and 1790 do proclaim principles contrary to those we have shewn to be the correct ones—these Acts would not preclude Canadian legislation upon the subject.

The Act of 1790 extends to the *Legislative Council and Assembly* of Canada the power of *varying* wholly or *in part*, its own provisions as well as the provisions of the Act of 1774. The Act of 1832 is still more precise upon this head, for it.....*confides* WITHOUT RESERVE *to Provincial legislation the appropriation of the funds arising from the*

(1) It may be remarked, *en passant*, that in its origin, this right of *régale* was limited to certain Sees, that it rested upon special causes, such as patronage, express clauses in grants, &c. rather than upon the royal authority considered in its essence; that the extension of the right to all Sees is recent, and that the legality of this extension is very questionable. So also might we question the right of Parliament to apply to Protestant worship the revenues of vacant benefices. But the foregoing argument is strengthened by these considerations.

Estates of the former order of Jesuits exclusively to education.

The Legislature of Canada is not therefore fettered by any precedent. It has but a single point to determine: what is the solution of the question the most just and the most conformable to treaties? The solution is that which we have pointed out.

We affirm that our solution is the most conformable to *the spirit of the Act of* 1832, to propriety, and the maxims of a sound policy:

To the spirit of the Act of 1832; for why, it may be asked, does this Act direct that the Jesuits' Estates shall be devoted to education? Because that was their primitive destination, and they belonged to a teaching congregation. But if we appeal to the primitive destination of this property as a guide to its present appropriation we must do so without limitation and with exactitude: and it will be found that the direction given to the property was not, vaguely and indefinitely, to education; but to Catholic education. It is, therefore, exclusively, to Catholic education that it should be devoted in the present day.

The solution of the question advocated by us is we have said in accordance with *propriety and the maxims of a sound policy.* From both these sources we derive support to our opinion. In truth, in the eyes of Catholics the Estates in question possess a character of sacredness, of which they cannot be divested but by a decision of the Holy See analogous to that contained in the Concordat of the year IX. The feelings of the Catholics of Canada would, then, be wounded by the abstraction of a portion of these Estates to form an endowment either for Protestant worship or for Protestant schools. They would be shocked, and with reason, at so glaring a departure from the laws of the Catholic Church, from the intention of the founders, and the stipulations of treaties. Policy is opposed to our giving a needless shock to sentiments of this kind. Even in 1774 and 1790 it was felt that this could not be done, and those were epochs when the principles of religious tolerance were yet ill understood and less practised; but they have since happily made great progress, and the same

ideas which have brought about freedom of religious worship in France, and, in England, the emancipation of the Catholics, should determine the Legislature of Canada to reserve exclusively for the Catholic religion the resources that originally were created only for her use, and which cannot be turned into other channels without causing in the breasts of all who profess this form of worship a profound and just affliction.

This Memoir has been composed in the belief that all who will be called upon to judge of its merits, possess sufficient knowledge of Canadian history and of public constitutional law to be able to appreciate the second part, that which relates to the effects of the conquest.

As to the first division of the work, which treats of the nature of the property under consideration, and the conclusions to be drawn from the facts, the reader before he condemns our position, ought at least to traverse the wide field of Catholic history, and make himself master of the principles and facts upon which we have relied.

We expect the same justice as well from those of our readers to whom, by reason of conformity in point of religion, the subjects treated upon are familiar, as from those who, professing other creeds, are still too equitable and too enlightened to consider these Estates otherwise than as Catholic in their origin and uses.

With respect to the capitulations and the treaties, and the legislative enactments that succeeded them, all will interpret them, we doubt not, in the most liberal sense, and in that spirit which presides over all deliberations of the British mind: *render unto every man that which is his.*

NOTES ON EDUCATION.

The preservation of the Catholic Faith in Canada is guaranteed by the Fundamental Act, whereby this Colony is incorporated with the English nation, and by the solemn promise of its Sovereigns. Its rights are therefore consecrated, and in order that they become not an empty name, they ought to exercise a salutary influence over all the Catholic classes of society, and at every age of life.

Education, the most vital element of society, imperiously demands its succour.

" The public school," said Cousin in 1833, " is in truth " a sanctuary where religion is as much in request as in " our temples."

The English Government in its project of 1839 declared that religion must form an inseparable element of instruction.

" Without the intervention of morality and religion," said Guizot, " all intellectual developement is a positive " danger to society—the atmosphere of the school should " be moral and religious."

A long and sad experience teaches that there is no branch of knowledge that there have not been found minds, in bondage to their eccentric conceptions, capable more or less of abusing to the detriment of religion or sound morality. " Science, philosophy, history are in continual contact with questions of religion," (of Mr. de Broglie in 18) " The union between science and faith is indissoluble." " Science needs a divine aroma," said Bacon, " to save it from corruption."

Religion, then, serves as a basis to all science as to all society. Without her aid we have only a multiplicity of contradictory systems, and the confusion of doctrines leading to doubt or indifference.

Our age has been too honest and sincere in its faith to identify itself with the impieties of the last. It has avowed, that religion, far from being adverse to the advancement

and propagation of all branches of human knowledge, has been on the contrary their safe-guard and most constant ally. It is to the Catholic Church that the learned owe the establishment of the first Universities, those cherished cradles of literature and science.

The Catholic population of Canada, in the interest of the faith, and in order to leave intact this portion, the most fair of the heritage of its fathers, under the protection of a Government full of benevolence and justice, has then the right to desire a complete system of instruction suitable to the industrial and mercantile classes, and which at the same time will satisfy the wants of more elevated classes of society and professional men, with all the guarantees of orthodoxy and morality that the interests of the faith demand.

This want has for a long time past been felt among a people whose nationality has resisted all the phases of the revolutions that have disturbed the country.

The people of Belgium wished to preserve their religion, and deemed it essential to establish a Catholic University, through which the youth of the country might find a ready path to all the sciences, free from the contagion of error and immorality. The Catholics of that country were well aware that the imperious necessity of a religious education could be met only by the free and independent, and direct intervention of the Catholic Bishops, whose principal duty it is to watch over the conservation of the Holy Doctrine.— They possess the competent authority to judge and watch over its diffusion. It is only in the instruction given under their direction that there is sufficient security. In this University all human sciences have their sanctuary. From the very elements of knowledge to the more elevated studies of Law, Medicine, History, Philosophy and Mathematics, the Catholic youth find all that is essential to their future worldly career, without danger to their faith. Eight years of the most striking success, both scientific and religious, have already crowned this noble enterprise.

It is a similar course of instruction, having the same object, and by the same means, that the Catholic Clergy of Canada wish to offer to the industrial and elevated classes of their communion.

The Protestant Universities may suffice for the population of that belief. They cannot serve for the Catholic population without serious prejudice to its faith.

If it were desired to introduce religious neutrality into the system of instruction, (a thing impossible in practice,) it would be easy to discover a perfect negative, which would soon infallibly degenerate into hostility.

If Ecclesiastical influence and authority are to be limited to a secondary and consultative part, if the rights of their order are reduced to simple advice or simple inspection, if the instruction to be given by it cannot go beyond a few oral and isolated lessons in the grade of mathematics and languages, its intervention will be inefficacious and often useless ; it will be always insufficient and incomplete.

It must be admitted that religious authority, to fulfil its mission, must direct the choice of masters, prescribe the course of instruction, and lay down the regulations of discipline. Without this we may have nominally the principle of religious education, but we shall have it only in name, the substance will not be there, the *thing* expressed by that name will be wanting.

A system of instruction under other auspices, would also involve enormous expenses out of all proportion to the results. The Colleges and Universities, purely laic, existing in the present day, sufficiently prove this.

The costly and fruitless attempts to establish a Normal School in Canada present us with a new proof. We must carefully avoid falling into such errors, least we experience disappointment in the object we have at heart.

The Catholic Bishops of Canada desire to see founded a University, adequate to the wants of the country, in which degrees, giving the right to practice the liberal professions, may be taken.

The school instruction, constituting the first efforts upon the understanding of the infant, would be given in a College, properly speaking, where the industrial and mercantile classes, as well as other classes of society, would obtain the education suitable to them.

The higher order of education would be given in the public classes of the University.

APPENDIX.

DISTRIBUTION OF COLLEGE STUDIES.

1.—Common Classes, composed of two sections.—Religious Studies ; the French and English languages, and their literature ; Philosophy ; Ancient, Modern and National History ; Geography and Cosmography ; Elementary Astronomy ; the elements of Physics and of Chemistry ; the elements of Natural History ; Zoology, Botany, Mineralogy, Geology ; Mathematics, Arithmetic, Algebra, Geometry, Trigonometry. Accomplishments—Drawing, Painting, Music, Gymnastics, &c.

2.—Special Classes, for Commerce and Industry.—Commercial Mathematics ; Book-Keeping ; Political and Industrial Economy ; Mechanics ; History, Composition, and use of Machines. Higher branches of the Mathematics—Analytical Geometry, description, &c. ; Application of Mathematics to Perspective, Civil and Military Architecture ; the construction of Machinery, Masonry, Carpentry ; Industrial Physics and Chemistry ; Land Surveying ; Linear, Topographic and Architectural Drawing ; Decorative Drawing, Modelling. For the University Classes, the Greek and Latin Languages and Literature.

SUPERIOR STUDIES OF THE UNIVERSITY.

Law ; Medicine ; Belles Lettres ; Natural, Historical, Philosophical and Mathematical Sciences.

The expense to be incurred would be for,—

1.—The construction or hiring of a suitable edifice.

2.—Furniture, Books, needful apparatus.

3.—Salaries of Professors.

4.—A certain number of purses for competition in learning, to stimulate emulation.

5.—Prizes and Rewards.

NOTICE

UPON THE ENDOWMENTS FOR EDUCATION IN UPPER CANADA.

1.—*University of "King's College,"* established in Toronto by Royal Charter granted in 1828. This institution is authorized to possess a revenue of £15,000 per annum. It has received from the Government, for sixteen years to the 1st January, 1844, an annual subsidy of £1,000, Sterling. It is not known whether this subsidy has been or will be demanded from the above date. It has also received and possesses an endowment in public lands to the extent of 225,944 acres. These lands, having formed part of what were called Crown Reserves, and being disseminated in small lots in different Townships, were found, at the epoch of the endowment, to have acquired considerable value, by their contiguity to improved lands, and by the clearances and buildings, either by occupiers without title, or by tenants who had taken them on lease for terms of years. These leases were, even at that time, a source of

considerable revenue. On the 1st of January, 1843, one half of these lands, or 110,610 acres, had been sold, and 95,334 acres were occupied under lease, so that only 20,000 acres remained unproductive. The quantity sold had produced £125,809 8s. 9d., making twenty two shillings and nine pence an acre. The rents of lands on lease had, at the same period, produced the sum of £16,887 18s. 4d. The expenses of the establishment, for the ground, buildings, furniture, and management, had amounted to £76,797 11s. 9d. The expenses of the Treasurer's office alone, are £1,200 annually.

2.—*College of Upper Canada*, established also at Toronto in 1829, and joined in 1837 to the University of *King's College*. At the same date of 1st January, 1843, this institution had received for endowment 63,268 acres of public lands, a portion of which had then been sold, another portion held on lease, and the remainder unoccupied. It has also received ground in the City of Toronto, covering a superficies of about 15 acres. The lands sold had produced £15,317 5s., averaging fifteen shillings and seven pence the acre. The sale of about one quarter of the ground, situated within the City of Toronto, has produced more than £4,200. The expenses of the College, for the fourteen years, have amounted to £79,387 12s. 4d., one-fifth of which sum has gone for the primitive expenses of the establishment. The annual salary of the Principal is £666 13s. 4d., Currency, or £600, Sterling. The Professors with the lowest salaries, have £100, Sterling.

Over and above the estates which bring or ought to bring a revenue to the two preceding united institutions, the land and improvements which they occupy at Toronto are valued at £36,000.

The foregoing details are drawn from the accounts rendered by the institutions themselves.

3.—*Grammar Schools*, in the Districts. These schools established by virtue of a Provincial law of 1807, in each of the territorial divisions called Districts, of which there are at present more than twenty, have a considerable endowment in public lands, called School lands. The principal in each District, besides this fund, enjoys a salary of £100 annually.

4.—*Victoria College*, established at Cobourg, belonging to the Wesleyan Methodists, received a loan of £4,100 in 1837 by order of the Secretary of the Colonies.

5.—*Grantham Academy* has also received a loan of £250 in obedience to a Provincial law.

In what precedes, no account is taken of the annual grants out of the public funds made since the re-union of the two Provinces to the institutions above mentioned, and to others. These grants have amounted to considerable sums.

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